

# Prosecutorial Response to Nonfatal Strangulation in Domestic Violence Cases

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Recent research has pointed to the need for systematic law enforcement training on domestic violence when nonfatal strangulation is involved to improve evidence-based prosecution of these potentially deadly assaults; however, virtually no research has examined the legal response to nonfatal strangulation since many states have made it a separate criminal felony. The current exploratory study examines filing, charging, and adjudication decisions of nonfatal strangulation cases over a 3-year period based on evidence documentation in law enforcement reports to explore how these cases are handled by the criminal justice system in Brevard County, Florida. Results support previous research showing the importance of training police officers and other personnel as insufficient evidence may be one possible factor limiting the prosecutors' ability to successfully prosecute domestic violence strangulation offenders to the highest extent available under the law. Implications spread across multiple disciplines.

**Keywords:** strangle; choking; intimate partner violence; criminal justice decisions; criminal justice system

Nonfatal strangulation is a common form of violence used in domestic relationships (Smith, Mills, & Taliaferro, 2001; Strack, McClane, & Hawley, 2001; Taliaferro, Mills, & Walker, 2001). Research has shown that 89% of nonfatal strangulation cases that came to the attention of law enforcement had a history of domestic violence (Strack et al., 2001). Victim reports also indicate how common strangulation is in abusive relationships, with 68% of abused women reporting experiencing nonfatal strangulation and surviving an average of 5.3 strangulation attempts (Wilbur et al., 2001). Other research has underscored long-term outcomes associated with experiencing strangulation multiple times, suggesting an increased frequency of adverse effects that affect victims' physical and mental health (Smith et al., 2001). Prior nonfatal strangulation has also been recognized as

an important predictor for lethal violence in the future, with an estimated risk of homicide seven and a half times higher for women who have experienced strangulation in the past (Glass et al., 2008).

Due to the heightened awareness of the lethality risk of nonfatal strangulation, many states across the United States including Florida, have passed specialized laws in the last decade making nonfatal strangulation a separate criminal felony (Pritchard, Reckdenwald, & Nordham, 2017). Under Florida's domestic battery by strangulation statute, it is a third degree felony to "knowingly and intentionally, against the will of another, impede[] the normal breathing or circulation of the blood of a family or household member or of a person with whom her or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person" (domestic battery by strangulation, 2007). The felony offense carries a maximum sentence of 5 years in prison and a \$5,000 fine for a first-time offender. However, it is extraordinarily difficult to prosecute nonfatal strangulation cases.

Many of the obstacles faced stem from evidentiary issues that plague nonfatal strangulation cases. Strangulation often leaves little to no physical evidence exhibited on the external portions of the victim's body immediately after the attack. Lack of visible injuries has resulted in minimization of the seriousness of nonfatal strangulation and difficulty identifying and documenting that the strangulation took place by both law enforcement and medical personnel (Maalouf, 2017; McClane, Strack, & Hawley, 2001; Strack & Gwinn, 2011; Strack et al., 2001). Additionally, systematic training regarding strangulation in the context of domestic violence for law enforcement as well as medical and legal personnel is lacking (O'Dell, 2007; Strack et al., 2001) as are coordinated efforts between all agencies involved in the criminal justice process for nonfatal strangulation cases (Pritchard, Nordham, Reckdenwald, & Holton, 2017; Reckdenwald, Nordham, Pritchard, & Francis, 2017). Along with victims who are reluctant to cooperate (Maalouf, 2017), pervasive gender bias throughout the U.S. judicial system surrounding domestic violence crimes (Dragiewicz, 2010; Maalouf, 2017; Murphy, 1997; Nath, 2007) compounds the difficulty of successfully prosecuting nonfatal strangulation cases.

The current study examines data from official law enforcement domestic violence records and public court records in Brevard County, Florida as part of a partnership with the County Sheriff's Office and the State Attorney's Office (SAO). Along with prior examinations showing inadequacies in evidence collection by law enforcement (Pritchard et al., 2018), 911 dispatch (Reckdenwald et al., 2017), and medical personnel (McClane et al., 2001), research has argued that poor training of first responders on how to identify and document signs and symptoms of nonfatal strangulation creates a challenge prosecuting these cases (Strack et al., 2001). This exploratory study examines filing, charging, and adjudication decisions to consider the role that evidence collection by law enforcement may play in these decisions in the County prior to specialized strangulation training for law enforcement. Before changes can be addressed to the response toward nonfatal strangulation in domestic violence across criminal justice agencies it is important to assess how strangulation is being handled by key agents in the process, specifically law enforcement and the legal system. We believe this is a critical first step in the effort to hold offenders accountable of this potentially deadly assault.

## BACKGROUND ON NONFATAL STRANGULATION

Over the last two decades, increased attention has been paid to nonfatal strangulation within the context of domestic violence and strides have been made regarding awareness of the use and seriousness of this type of assault (Pritchard et al., 2017). In particular, research has shown how commonly strangulation is used by domestic violence perpetrators (Glass et al., 2008; Hawley, McClane, & Strack, 2001; Joshi, Thomas, & Sorenson, 2012; McClane et al., 2001; Smith et al., 2001; Strack et al., 2001; Taliaferro et al., 2001; Wilbur et al., 2001). Reports indicate that as many as 68% of shelter women have been strangled, with the majority assaulted by their intimate partner (Wilbur et al., 2001). Additionally, it has been shown that strangulation often co-occurs with other forms of abuse (Joshi et al., 2012) and many experience multiple attacks (Joshi et al., 2012; Smith et al., 2001; Wilbur et al., 2001). Signs and symptoms of nonfatal strangulation have also been established in the literature (Funk & Schuppel, 2003; McClane et al., 2001; Plattner, Bolliger, & Zollinger, 2005) as well as the negative health consequences of nonfatal strangulation (Campbell, 2002; Coker, Smith, & Fadden, 2005; Joshi et al., 2012; Smith et al., 2001). Other research has shown that nonfatal strangulation is a significant risk factor for femicide by an abusive partner (Glass et al., 2008).

### Barriers of Prosecuting Nonfatal Strangulation Cases

***Inadequacies in Evidence Collection.*** This attention to nonfatal strangulation can be credited to the landmark study conducted in San Diego, California by District Attorney Gael Strack, Dr. George McClane, and Dr. Dean Hawley (the San Diego study; see Hawley et al., 2001; McClane et al., 2001; Strack et al., 2001). In the San Diego study, Strack and colleagues evaluated 300 cases of nonfatal strangulation submitted for misdemeanor prosecutions between 1990 and 1997 and indicated that 89% of the cases involving strangulation were also characterized by a history of domestic violence in the relationship. These results showed that strangulation in the context of domestic violence was more common than previously realized by criminal justice and medical communities. Furthermore, this influential study highlighted the need to properly train for investigating and prosecuting nonfatal strangulation cases as many cases had no or little external evidence that the violent assault took place. Strack et al. (2001) found that half of the examined cases had no visible injuries related to strangulation present and 35% had only minor injuries, making documentation minimal for police untrained to identify the invisible injuries often present with nonfatal strangulation. Additionally, only 15% of the cases had serious enough injuries where a photograph of high grade was taken by police and could be used as evidence to aid prosecutors in court. The limited cases that were able to be prosecuted generally included evidence of a history of violence in the relationship, injuries from other violence that took place, and corroboration that the strangulation took place (Strack et al., 2001). However, police and prosecutors' lack of understanding of the symptoms and overreliance on the visible signs of strangulation, led to an inability to bring a case up for prosecution due to a lack of probable cause for strangulation.

More recent research highlights the need for training to improve first responders' ability to identify and properly document incidents of nonfatal strangulation (Pritchard et al., 2018; Reckdenwald et al., 2017). In a retrospective analysis of a sample of 591

domestic violence cases over a 3-year period (2011–2013), Pritchard et al. (2018) estimated the prevalence of strangulation cases and “potential” strangulation cases that may have been missed by responding officers, and documented the quality of police officer evidence collection. Results indicate clear inadequacies in identification and documentation of nonfatal strangulation by law enforcement. It was found that in the majority of cases the incorrect term “choke” (which refers to an obstruction within the throat) rather than “strangulation” (an external compression of the neck) was used in the report to describe the event. In almost 37% of explicit strangulation cases, documentation of the precise manner in which the strangulation took place was missing in the police report. Moreover, 17% of the cases examined may have included a strangulation that was missed by responding officers. Additionally, Reckdenwald et al. (2017) emphasized the need for 911 dispatchers to be better prepared to relay strangulation-related information to responding officers. Examining a sample of 381 cases charged as domestic violence in 2011, results show that dispatchers were far less likely than road patrol to identify potential strangulation cases at the 911 call level with only a 54.5% overlap in identifying strangulation incidents; however, in roughly 10% of strangulation cases the 911 dispatchers noted strangulation that was not recorded in the police report.

Along with criminal justice implications, the San Diego study also attracted the attention of the medical community who were largely unaware of how common and serious nonfatal strangulation was in domestic violence situations, since many victims fail to seek professional medical help (Smith et al., 2001; Wilbur et al., 2001). According to McClane et al. (2001), those that do seek medical attention are often underevaluated since they may not have visible injuries. Victims are also frequently misdiagnosed and viewed as unreliable or emotionally unstable. This is largely due to biases held against non-fatal strangulation victims, including inaccurate accusations of being intoxicated, hysterical, and hyperventilating. Along with underevaluation or misdiagnosis, research has indicated that strategies to detect injuries (i.e., direct observation, tissue-staining dyes, colposcopy) are less accurate for injuries on darker skin (Baker & Sommers, 2008). Lack of medical identification and documentation can have a significant impact on whether a case is prosecuted as well as on the victim’s health, with research documenting death occurring up to several weeks after the strangulation attack (McClane et al., 2001).

The above literature demonstrates the importance of trained first responders as key agents of evidence collection for successful prosecution of these potentially lethal offenses. With strangulation a felony offense in Florida, prosecutors must prove beyond a reasonable doubt that the offender of the crime knowingly and intentionally committed the crime by placing the victim at “risk of great bodily harm” (*United States v. Moss, 2017* at \*956; see also domestic battery by strangulation, 2007). Meeting this burden of proof is not simple as the defense will argue against every element of the statute, including the amount of physical force it takes to fully accomplish a strangulation (*United States v. Moss, 2017*). Little to no physical evidence of the strangulation hinders the ability to prosecute a case, especially since victims often refuse to cooperate with prosecutors (Maalouf, 2017). Research indicates that along with documentation of victim injury, victim cooperation and participation in prosecution has a significant impact on the decision to prosecute intimate partner violence cases (Messing, 2014).

***Gender Bias in the Criminal Justice System.*** For violence against women in general, there is a large body of literature that has identified domestic violence victims’ experiences of gender bias in the U.S. judicial system (e.g., Dragiewicz, 2010; Epstein, 2002; Murphy, 1997; Nath, 2007). Whether dealing with the criminal or civil court system,

victims face revictimization as they maneuver through the criminal justice system's complexities coupled with the indifference of their abuses and injustice from prosecutors, judges, and court personnel (Hafemeister, 2011; Maalouf, 2017, Murphy, 1997). Many domestic violence victims are not viewed as credible, based on their trauma experiences, making it even more likely for prosecutors to choose not to move forward with a case (McClane et al., 2001; Murphy, 1997). Indeed, prosecutors have unfettered discretionary power to determine whether to pursue any domestic violence case, including nonfatal strangulation cases; and they do not have to justify their prosecutorial decisions (Franklin, 2010; Hafemeister, 2011).

Most strangulation victims are women, and the majority of strangulation offenders are men (Nath, 2007; Strack & Gwinn, 2011; Strack et al., 2001). Recently, Epstein and Goodman (2019) review how "women survivors face a Gaslight-style gauntlet of doubt, disbelief, and outright dismissal of their stories" (p. 399). According to Epstein and Goodman, the criminal justice system discounts women's credibility because of a lack of understanding of symptoms resulting from abuse, inaccurate interpretations of women's demeanor, and negative stereotypes of women's reasons for seeking help. Also, traumatic brain injury or post-traumatic stress disorder, which are both consequences of nonfatal strangulation (Campbell et al., 2017; Kwako et al., 2011; Smith et al., 2001; Wilbur et al., 2001), can have a significant impact on both memory and behavior, hindering a survivor's ability to recount "credible" stories and making her feel less confident to testify against her abuser (Johnson, 2007).

The frequent co-occurrence of strangulation with other more visible forms of domestic violence, lack of adequate training or coordination when collecting evidence of the crime, and the systemic biases influencing violence against women cases in general all create a challenging context in which prosecutors must operate. Together, these factors appear to form barriers to a prosecutor's ability to pursue a case as felony strangulation. Given the extant literature, it is presently unclear whether or not improving the quality of evidence collection could be a way to remove at least one key barrier to moving forward with nonfatal strangulation cases.

## **CURRENT STUDY**

Though previous research has brought attention to the complexities of prosecuting nonfatal strangulation cases by arguing the lack of law enforcement training beyond "visible" signs of strangulation hinders the ability of prosecutors to move forward with a strangulation case (Strack et al., 2001), this research is limited to prosecutorial filing decisions. The current study extends previous research by exploring documentation of nonfatal strangulation and related symptoms in police reports and three key decision points in the legal process (i.e., filing, charging, and adjudication). To do so, we examine official domestic violence records of nonfatal strangulation in Brevard County, Florida (i.e., police reports and court records) over a 3-year time period (2011–2013), after domestic violence nonfatal strangulation was enacted into law as a separate felony offense (domestic battery by strangulation, 2007). Although domestic battery by strangulation is a felony of the third degree in Florida, strangulation is only mentioned briefly in State law enforcement manuals regarding domestic violence and no state requirement exists mandating formal law enforcement training on identifying or documenting strangulation injuries. Our goal is to determine how nonfatal strangulation cases are handled in the County prior to specialized

law enforcement training. We believe first responders can play an important role in holding offenders accountable and this study will provide a baseline from which future inquiry can build to understand and support practice and policy related to nonfatal strangulation.

## METHODOLOGY

### Data

For this study, we utilize data collected through a partnership with the County Sheriff's Office and the State Attorney's Office (SAO)<sup>1</sup> as part of the Brevard County Strangulation Prevention Project Workgroup, in Brevard County, Florida. This workgroup is a collaboration between researchers, law enforcement, public health personnel, prosecutors, domestic violence shelter advocates, and emergency medical service personnel to develop a county-wide, multiagency response to incidents of domestic violence strangulation. Two sources were used to extract the data for this project: (a) domestic violence police report records and (b) domestic violence public court records.

Two records systems were used to gather information from domestic violence law enforcement reports: Pass-On and BULLETv2. Pass-On is a computer system used to distribute daily agency-wide police report summaries, and was used by researchers to identify the initial sample frame of domestic violence cases. A sample of 591 cases between January 1st, 2011 and December 31st, 2013 that were charged as domestic violence were first identified in Pass-On.<sup>2</sup> Once these cases were identified in Pass-On, researchers used BULLETv2, a system that manages electronic police reports and contains information about the offense, offender, and victim, to code the cases. For the purpose of the current study, those cases that explicitly referenced nonfatal strangulation incidents were coded and selected out for analyses. Of the 591 domestic violence cases identified, 11.5% ( $n = 68$ ) explicitly referenced strangulation. Police reports referencing explicit strangulation were defined as those that described strangulation by using words such as strangulation, choking, or other synonyms or derivatives to describe the assault being reported. Evidence of injuries and symptoms related to a strangulation attack such as neck injuries, "shoulder," "chest," or "back" injuries, petechiae-like injuries (e.g., "red eye" or "red spots" in ears, face, mouth), voice abnormalities, breathing difficulties, trouble swallowing, and psychological symptoms (e.g., memory problems, slurred speech) were recorded, as well as whether the victim sought medical attention and if photographs were taken to document injuries; all of which could be used as possible evidence during prosecution.<sup>3</sup>

To gather information from domestic violence court records for all explicit strangulation cases during the study time period, public records data from the Clerk of Courts of Brevard County were utilized. Information includes the disposition of the case (filed or not filed with the SAO), the charge that was filed against the defendant (may include domestic battery by strangulation (2007); aggravated battery (1988); felony battery, battery, or misdemeanor battery (2001); all of which may be charged for acts of [definition of] domestic violence (2002), whether the defendant pled guilty and which charge the defendant pled guilty to (original or lesser charge), whether there was an entry of nolle prosequi in the court record (i.e., formal notice of abandonment by the prosecutor), adjudication decision (guilty or the conviction was withheld<sup>4</sup>), and details about the punishment (e.g., sentenced to Department of Corrections [DOC], length of imprisonment, sentenced to probation, length of probation, referred to pretrial diversion). Nonfatal strangulation cases that were

coded from BULLETv2 were identified in the court records and coded by researchers. Of the 68 explicit nonfatal strangulation cases identified from BULLETv2, 58 court records had complete information available for the final analysis.<sup>5</sup>

## Analysis Plan

It is important to note that though the use of nonfatal strangulation is quite common in domestic violence situations, we are studying what is considered a rare event. This coupled with the fact that we are looking at instances that came to the attention of a single County's law enforcement agency over a period of time has resulted in our examination being limited to descriptive analyses. First, we describe demographic characteristics of victims and offenders to better understand who is involved in explicit strangulation incidents over the study period. Then, we describe strangulation-related injuries and symptoms recorded in police reports to understand how law enforcement officers are documenting nonfatal strangulation. To examine filing, charging, and adjudication decisions for all explicit strangulation cases, we next examine descriptive statistics of three key decision points in the legal process (i.e., disposition, highest charge filed, and adjudication outcome). It is worth noting that prosecutorial decisions and judicial outcomes are complex and many factors play a role in whether to file a case, what charges to file, whether plea bargaining should be considered, whether the offender is guilty or not, and what sentence to set (Cramer, 1999; Frederick & Stemen, 2012; Henning & Feder, 2005; Kingsnorth & MacIntosh, 2007). Our analyses are unable to account for these factors and as such, results should be taken with caution.

## RESULTS

### Descriptive Statistics

Table 1 shows the descriptive characteristics of offenders and victims for the police-identified explicit nonfatal strangulation cases during the study period. On average offenders were 35.55 years old ( $SD = 11.45$ ) and victims were slightly younger at 33.21 years of age ( $SD = 11.60$ ). The majority of strangulation cases involved male offenders (91.4%) and female victims (79.3%) and occurred between White offenders (75.9%) and White victims (81.0%).<sup>6</sup> Documentation of the victim-offender relationship is lacking in police reports as almost one-fourth of the cases were missing details of the type of relationship ( $n = 14$ , 24.1%). Of those cases with documentation, over 70% involved intimate or former intimate partners with the remaining involving family members.

To explore how law enforcement is documenting nonfatal strangulation in police reports we calculated details of strangulation-related injuries and symptoms recorded by officers (see Table 2). The majority of explicit strangulation cases mention one or more strangulation-related injury or symptom ( $n = 45$ , 77.6%). Injuries and symptoms that are commonly documented by law enforcement are breathing difficulties or changes ( $n = 38$ , 65.5%) and neck injuries ( $n = 32$ , 55.2%), followed by psychological symptoms ( $n = 14$ , 24.1%) and shoulder, chest, or back injuries ( $n = 11$ , 19.0%). Few cases mention petechiae-like injuries ( $n = 2$ , 3.4%), voice changes or abnormalities ( $n = 2$ , 3.4%), or trouble swallowing ( $n = 4$ , 6.9%). Also, most cases mention photographs taken of the strangulation

**TABLE 1. Descriptive Statistics of Nonfatal Strangulation Cases Identified in Police Reports ( $n = 58$ )**

	Frequency (%) / Mean (SD)
Offender	
Age	35.55 (11.45)
Male	53 (91.4)
White <sup>a</sup>	44 (75.9)
Victim	
Age	33.21 (11.60)
Female	46 (79.3)
White	47 (81.0)
Victim–offender relationship	
Intimate or former intimate	32 (55.2)
Family	12 (20.7)
Acquaintance	0 (0)
Not specified	14 (24.1)

**Note.** Percentages have been rounded and may not total 100%.

<sup>a</sup>The electronic record system used to collect information only recorded race as White or Black.

injuries ( $n = 53$ , 91.4%) and that the victim sought medical attention to further examine and document injuries ( $n = 39$ , 67.2%).

To explore the legal response to explicit strangulation identification in police reports we calculated descriptive statistics for key decision points in the process (see Table 3). Of the 58 cases that were explicitly identified in police reports as incidents of nonfatal strangulation during the study period, less than half ( $n = 27$ , 46.5%) were filed as a formal criminal charge with the SAO and only a little more than half of those cases were able to be charged with felony domestic battery by strangulation (2007;  $n = 15$ , 55.6%).<sup>7</sup> In three cases (11.1%) the highest charge filed was another felony battery offense, aggravated battery (1988) or felony battery (2001), and in one-third of the cases ( $n = 9$ ) the highest charge filed was a misdemeanor. Eight cases included a battery offense, battery domestic violence (2002) or battery (2001), and one case had a highest charge of another misdemeanor (i.e., violation of release condition).<sup>8</sup>

Of the 27 cases that had a formal charge, a guilty plea to the original charge or a lesser agreed upon charge characterized all but two cases (92.6%). The majority of cases ( $n = 20$ , 74.1%) were characterized by a guilty plea and conviction.<sup>9</sup> However, although almost 67% of cases had the highest charge of either felony strangulation ( $n = 15$ ) or another felony offense ( $n = 3$ ), more than half resulted in a guilty plea and misdemeanor conviction ( $n = 14$ , 51.9%). Only six cases (22.2%) were characterized by a guilty plea and felony conviction—half of which were for domestic battery by strangulation. The remaining seven

**TABLE 2. Details of Strangulation-Related Injuries and Symptoms in Police Reports ( $n = 58$ )**

	Frequency (%)
Any EXPLICIT strangulation injuries or symptoms described (neck injury, petechial, voice changes, breathing change, pain swallowing, etc.)?	45 (77.6)
Any "neck" injuries described?	32 (55.2)
Any "shoulder," "chest," or "back" injuries described?	11 (19.0)
Any petechial-like injuries "red eyes" or "red spots" in ears, face, mouth, and so on, described?	2 (3.4)
Any voice changes or abnormalities, for example, "hoarse"?	2 (3.4)
Any mention of breathing difficulties or changes?	38 (65.5)
Any mention of trouble or pain swallowing?	4 (6.9)
Any mention of psychological symptoms (e.g., memory problems, slurred speech)?	14 (24.1)
Any mention of seeking medical attention for injuries?	39 (67.2)
Any mention of photographs taken?	53 (91.4)

*Note.* Percentages have been rounded and may not total 100%.

cases had either a guilty plea and a withhold of adjudication ( $n = 5$ , 18.5%), a dismissal ( $n = 1$ , 3.7%), or a referral to pretrial diversion ( $n = 1$ , 3.7%).

## DISCUSSION

Domestic battery by strangulation (2007) is a felony offense under Florida statutes; however, this study points to the challenge prosecutors have in successfully prosecuting domestic violence nonfatal strangulation offenders to the highest extent available under the law. Of the 68 explicit strangulation cases identified in the police reports, 10 did not have probable cause that a crime occurred and were not sent to the SAO. Another 31 were not filed with the SAO, because they were not considered viable cases for prosecution. This makes 41 cases (or over 60% of the cases) where nonfatal strangulation was mentioned in the police report and no one was charged with a crime. In only 27 cases a formal charge was filed with the court, leaving over half of the cases rejected for prosecution (53.4%).

In Strack et al.'s (2001) influential study, 25% of the nonfatal strangulation cases submitted for misdemeanor prosecution were rejected for prosecution due to the lack of corroborating evidence beyond more minimal visible injuries (i.e., redness, cuts, bruising of the neck). Though our study indicates a lower rate of prosecution for nonfatal strangulation, of these 27 cases that had sufficient evidence to pursue prosecution, the majority of cases were pursued as felony offenses (66.7%). Specifically, 15 cases (55.6%) were charged with domestic battery by strangulation. In the remaining cases, the highest charge was another

**TABLE 3. Legal Response to Nonfatal Strangulation Identified in Police Reports (n = 58)**

	Frequency (%)
Disposition (filed = 1)	27 (46.5)
Highest charge filed	
Domestic battery by strangulation	15 (55.6)
Other felony <sup>a</sup>	3 (11.1)
Misdemeanor <sup>b</sup>	9 (33.3)
Legal outcome	
Pled guilty and adjudicated guilty	20 (74.1)
Guilty felony	6 (30.0)
Guilty strangulation	3 (15.0)
Guilty other felony battery	3 (15.0)
Guilty misdemeanor	14 (70.0)
Guilty misdemeanor battery <sup>c</sup>	11 (55.0)
Other misdemeanor	3 (15.0)
Pled guilty and adjudicated not guilty	0
Pled guilty and adjudicated withheld <sup>d</sup>	5 (18.5)
Dismissal of case <sup>e</sup>	1 (3.7)
Other <sup>f</sup>	1 (3.7)

**Note.** Percentages have been rounded and may not total 100%.

<sup>a</sup>Aggravated battery or felony battery.

<sup>b</sup>In 1 case violation of release condition was the highest charge. In the remainder of the cases, battery domestic violence or battery was highest charge.

<sup>c</sup>Battery domestic violence or battery.

<sup>d</sup>In 2 cases the defendant pled to battery by strangulation. In three cases the defendant pled to a lesser charge of misdemeanor battery.

<sup>e</sup>Victim filled out a drop charge affidavit. When the victim did not show up to trial the state felt it was best to nolle prosequi the case.

<sup>f</sup>Defendant was referred to a pretrial diversion program.

felony battery (2001;  $n = 3$ , 11.1%), a misdemeanor battery ( $n = 8$ , 29.6%), or another misdemeanor ( $n = 1$ , 3.7%).

Felony conviction rates are much lower, with only three cases having a conviction of felony domestic battery by strangulation, amounting to 4.4% of the cases identified by responding police officers as involving nonfatal strangulation. Of the cases filed with the SAO, more than half received a misdemeanor conviction and over a quarter resulted in a

“not guilty” outcome, where the final determination was either a withheld decision ( $n = 5$ ), a dismissal of the case ( $n = 1$ ), or a referral to pretrial diversion ( $n = 1$ ). The complexities of these decisions may tie into how first-time offenders, legally speaking, are treated by the judiciary. According to the County prosecutor, in the circuit where the current study’s cases are prosecuted, offenders will generally receive a withhold of adjudication on a felony if they have no prior withholds or convictions of a felony—a practice allowed under Florida law for offenders who are guilty of a noncapital felony and have been sentenced to probation. With reports indicating that police are only notified in slightly more than half of all nonfatal domestic violence victimizations (Reaves, 2017), legally many domestic violence defendants are seen as “first-time offenders” and as such would receive “not guilty” convictions. Despite these intricacies of judicial decision making, it does appear that prosecutors in the County are trying to prosecute strangulation cases to the highest degree available under the law when they feel confident in their ability to do so. Supporting previous research (Strack et al., 2001), our study’s results indicate that evidence to corroborate the assault may be one factor influencing these decisions.

Our results should be viewed as a baseline of how law enforcement officers’ documentation of strangulation may impact prosecution prior to any formalized training on how to effectively investigate a strangulation assault. Along with previous research (Pritchard et al., (2018); Strack et al., 2001), this study shows that law enforcement documentation of nonfatal strangulation is somewhat lacking, which is not all that surprising considering there is no state requirement mandating formal training on the subject. Results indicate that law enforcement officers are generally documenting some injury or symptom related to nonfatal strangulation, with 77.6% of the cases mentioning at least one key injury or symptom. However, that still leaves 22.4% of the cases that mention a strangulation occurred, but do not have any documentation of related injuries or symptoms that would corroborate the strangulation. Moreover, even when injuries and symptoms are documented in the report they mainly comprise of neck injuries (55.2%) and breathing difficulties (65.5%). Other key injuries and symptoms (e.g., shoulder, cheek, or back injuries; petechiae-like injuries; voice changes; trouble or pain swallowing) were rarely recorded in police reports. Without comprehensive training on the signs and symptoms of strangulation, police are largely unaware to look beyond more visible injuries (e.g., bruising or breathing difficulties), resulting in injuries or symptoms which are more difficult to detect (e.g., petechiae or voice abnormalities) going unreported. From a practice and policy standpoint, it is essential that first responders are formally trained to adequately collect pertinent evidence as it may significantly impact the ability of prosecutors to prove that the alleged strangulation occurred in court.

Likewise, though most cases had photographic evidence available and victims who sought medical attention for their injuries it is unclear whether this evidence was adequate and able to be used in prosecution. In Strack et al. (2001) San Diego study, only 15% of the cases had a high quality photo of the strangulation injury that was able to be used in court to corroborate the assault. The majority of cases did not have a photo as evidence (62%) due to injuries either not being visible or being too minor to photograph. Adding to this challenge, research has suggested that it may be more difficult to identify injuries on individuals with darker skin (Baker & Sommers, 2008; Faugo et al., 2013; Sommers et al., 2009) and there may be a delay in the development of certain strangulation injuries, bruising for instance, may show up hours or days later (Funk & Schuppel, 2003). Although Strack et al. did note that observations by medical personnel were more detailed than those made by law enforcement who have not been trained to recognize certain strangulation-related

injuries and symptoms (e.g., petechiae, trouble swallowing, or slurred speech), research has suggested that strangulation victims are commonly underevaluated or misdiagnosed by medical personnel (McClane et al., 2001). Documented evidence to corroborate the strangulation and hold offenders accountable requires coordinated efforts between all agents in the criminal justice system (i.e., law enforcement, medical, and legal personnel).

With research indicating domestic violence victims' credibility is often discounted and devalued throughout the criminal justice system (Epstein & Goodman, 2019), it is important to take the emphasis off the victim and place it on the nuances of strangulation injuries and how they present differently than other physical injuries. Pritchard et al. (2017) recommend the use of medical professional expertise to provide additional documentation of evidence of signs and symptoms of strangulation and other research has supported the use of forensic medical documentation to strengthen the ability to prosecute the offender (Baker & Sommers, 2008; Laughon, Glass, & Worrell, 2009; Strack et al., 2001). Expert medical personnel could also testify about the signs and symptoms of a strangulation in court. Even still, and most importantly, the onus of proving the entire case is relieved from the victim.

There are limitations with the current study that warrant discussion. First, results are based on a rare event and as such, analyses involve a small number of nonfatal strangulation cases and are limited to descriptive analyses. Due to the limited number of cases we were unable to test the relationship between evidence collection and legal decisions or account for other factors that may be influencing these decisions. Research has shown that there are many factors, legal and extralegal, that go into legal decisions (O'Neal, Tellis, & Spohn, 2015). Furthermore, generalizability is an issue as these results only focus on one single law enforcement agency in Florida. Finally, it is important to note that the analyses are based on nonfatal strangulation cases that come to the attention of police officers. There may be instances of nonfatal strangulation that go unreported to law enforcement. There is also a possibility that these cases represent more severe cases that would in turn, be more likely filed, charged, and convicted.

## **CONCLUSION**

This study utilizes data from official domestic violence records of strangulation to determine the prosecutorial response to domestic violence nonfatal strangulation based on documentation in law enforcement reports prior to any formalized law enforcement training on strangulation. In Florida, it is a felony offense to strangle an intimate partner, family, or household member; however, lack of proper identification and documentation of strangulation in police reports may hinder the SAO to pursue these cases and for prosecutors to obtain a conviction. Though this study is limited to a subset of domestic violence cases from a single agency, results from this project point to opportunities to improve the response to nonfatal strangulation across multiple disciplines (i.e., law enforcement, medical, and legal). There are various reasons unexplored by this study, which may impact the ability for the SAO to file a strangulation case, charge a defendant with the highest offense available under the law, and arrive at a successful conviction of the offender. Our study considers one piece in the chain of evidence collection—what is documented in the police report. Our study shows the importance of training first responders. Law enforcement play an essential role in recognizing strangulation, conveying the seriousness of strangulation to victims, providing corroborating evidence for eventual prosecution, and referring identified victims

to medical exams where more evidence can be collected for prosecution. Future research should continue to examine factors that may influence the legal response toward nonfatal strangulation and evaluate coordinated efforts to improve the response across multiple agencies in the criminal justice process.

## NOTES

1. The purpose is to establish a baseline before implementing training and coordination efforts aimed at improving prosecution rates.

2. Pass-On is intended to be a comprehensive list of domestic violence cases handled by the agency; however, because of administrative limitations, some cases are not entered into the system. On account of this, it is possible that we did not gather every case of nonfatal strangulation during the study time period.

3. Explicit strangulation cases range from no documentation of injuries or symptoms (13 cases) to 4 injuries or symptoms reported (8 cases), with an average of 1 injury or symptom reported by police.

4. A withhold of adjudication is when the judge orders some form of sanctions, but the defendant is not formally convicted of the crime.

5. Ten strangulation cases were removed from the analyses, because they did not have probable cause that a crime was committed and they were not sent to the SAO.

6. Police reports did not distinguish between ethnicity and race, and therefore a large population of Hispanic residents were coded as either “White” or “Black” depending only on race. In-depth analysis of ethnicity, therefore, was not possible from these records.

7. In 1 of these cases 2 counts of domestic battery by strangulation were filed.

8. It is important to note that an offender can be charged with multiple offenses; In total, 52 charges were filed across 27 strangulation cases filed with the SAO; 16 charges of domestic battery by strangulation, 13 charges of other felony battery, 15 charges of other misdemeanor battery, and 8 charges of other offenses (e.g., child abuse, carrying a concealed weapon, false imprisonment, criminal mischief, trespassing, violation of release condition, or burglary of a dwelling with an assault or battery).

9. The guilty plea and conviction may have been to a lesser offense than the original charge.

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